STATE OF MICHIGAN

COURT OF APPEALS

INEZ GENDRON,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Corporation,

Defendant-Appellant.

October 7, 1993

No. 152060
LC No. 90 0046 CK

Before: Shepherd, P.J., and Holbrook, Jr. and MacKenzie, JJ.

PER CURIAM.

Defendant appeals as of right the April 24, 1992 order granting plaintiff's motion for summary disposition on her complaint for first-party no-fault benefits. The trial court held that plaintiff's injuries arose out of the ownership, operation, maintenance or use of a motor vehicle under MCL 500.3105(1); MSA 24.13105(1). We affirm.

The facts of this case are not in dispute. On March 21, 1988, plaintiff drove her pickup truck to a coin-operated self-serve car wash in Harrison, Michigan. After stopping in one of the car wash stalls, plaintiff exited her truck and began walking toward a nearby change machine to obtain change for the car wash machine. As she was walking along the side of the truck, she slipped and fell on a patch of ice and was injured.

On appeal, defendant argues that the trial court erred in granting summary disposition in favor of plaintiff because her fall had no causal connection with the ownership, operation, maintenance or use of a motor vehicle. We disagree.

MCL 500.3105(1); MSA 24.13105(1) provides:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

The term "maintenance," as used in the no fault act, is to be liberally construed. Miller v Auto Owners Ins Co, 411 Mich 633; 309 NW2d 544 (1981); Wagner v Michigan Mutual Liability Ins Co, 135 Mich App 767, 773; 356 NW2d 262 (1984). The term includes more than mechanical repairs. Michigan Bell Telephone Co v Short, 153 Mich App 431, 435; 395 NW2d 70 (1986).

In Musall v Golcheff, 174 Mich App 700, 703-704; 436 NW2d 451 (1989), this Court held that the plaintiff, while attempting to wash his motor vehicle, was performing maintenance within the meaning of the no-fault act. In Musall, the plaintiff drove his pickup truck into a coin-operated, self-serve car wash. He parked the truck in one of the stalls and put some coins into the car wash machine. The plaintiff was then struck by the wash wand and suffered injury to his right eye.

In light of the foregoing, we agree with the trial court that plaintiff was entitled to receive no-fault PIP benefits because she was injured while attempting to wash her vehicle. Id. We note that the cases relied upon by defendant are distinguishable. In those cases, coverage was denied because the slip and fall injury

was not causally related to the use or maintenance of a motor vehicle as a motor vehicle. In contrast, plaintiff's injuries in this case were occasioned during the course of her attempt to maintain her vehicle. Although a different factual setting might warrant a different decision, we note that it is the task of the courts to draw lines and decide where cases fall when the parties themselves cannot agree.

Affirmed.

/s/ John H. Shepherd
/s/ Donald E. Holbrook, Jr.

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Defendant-Appellant.

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MacKENZIE, J. (dissenting.)

Unlike the majority, I am of the opinion that the trial court erred in holding that plaintiff's injuries arose out of the ownership, operation, maintenance or use of a motor vehicle under MCL 500.3105(1); MSA 24.13105(1).

Plaintiff slipped and fell on a patch of ice as she was walking to a change machine at a car wash. The majority reasons that because washing a motor vehicle constitutes "maintenance" within the meaning of the statute, see Musall v Golcheff, 174 Mich App 700, 703; 436 NW2d 451 (1989), and because plaintiff was about to wash her pickup truck when she fell, she is entitled to no-fault coverage. I do not agree.

First-party no-fault benefits are available under MCL 500.3105(1); MSA 24.13105(1) where an injury "arise[s] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Under this section, the causal connection between the injury and the maintenance of a motor vehicle must be more than incidental, fortuitous, or "but for." Daubenspeck v Auto Club of Michigan, 179 Mich App 453, 454; 446 NW2d 292 (1989); Auto-Owners Ins Co v Citizens Ins Co of America, 189 Mich App 458, 460; 473 NW2d 753 (1991), citing Michigan Mutual Ins Co v CNA Ins Cos, 181 Mich App 376, 381; 448 NW2d 854 (1989). See generally Thornton v Allstate Ins Co, 425 Mich 643, 659; 391 NW2d 320 (1986). The no-fault act was not designed to compensate all injuries occurring in or around a motor vehicle. Rajhel v Automobile Club Ins Ass'n, 145 Mich App 593; 378 NW2d 468 (1985).

In Rajhel, supra, the plaintiff sought benefits under the no-fault act for injuries sustained when she slipped and fell on ice while walking from her disabled car to a tow truck she had called. This Court concluded that she should be denied coverage because "irrespective of the question of whether plaintiff was . . . 'maintaining' a motor vehicle, there has simply been no causal connection established between that activity and the injury sustained." 145 Mich App at 595. In Daubenspeck, supra, the plaintiff claimed that he was entitled to no-fault benefits for injuries he sustained when he slipped and fell on ice while refueling his vehicle. This Court disagreed, concluding that "the connection between the act of pumping gas and plaintiff's slip and fall was merely incidental, fortuitous, or 'but for.'" 179 Mich App at 455.

In this case, even assuming that plaintiff was about to perform maintenance on her vehicle, I am of the opinion that the causal connection between plaintiff's preparation to wash her pickup truck and her slip and fall was merely fortuitous. As in Rajhel and Daubenspeck, supra, plaintiff was injured by losing her footing on a patch of ice, an injury which could "just as well [have] occurred elsewhere." Rajhel, supra, at 595, quoting Denning v Farm Bureau Ins Co, 130 Mich App 777, 786; 344 NW2d 368 (1984); Daubenspeck, supra, at 455. Stated otherwise, plaintiff's injuries were not caused by an act of vehicle maintenance; instead, the car wash merely served as the location of her slip and fall. Compare Marzonie v Auto Club Ins Ass'n, 441 Mich 522; 495 NW2d 788 (1992).

Because the requisite causal connection between plaintiff's injury and the maintenance of her vehicle is lacking on these facts, I conclude that she was not entitled to coverage under MCL 500.3105(1); MSA 24.13105(1). Accordingly, I would reverse the trial court's order granting summary disposition in favor of plaintiff.

/s/ Barbara B. MacKenzie